IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3566 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARYA SHIP BREAKING CO LTD

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 3566 of 2004
M/S TRIVEDI & GUPTA for Petitioner No. 1-2
MR MA SHEIKH for Respondent No. 1&2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 04/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

RULE. Service of rule is waived by learned Standing Counsel Shri M.A. Shaikh for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. It may be stated that the facts involved in this petition are similar to the facts of Special Civil Application No. 6299/02, which was decided by this court (Coram:- M.S. Shah & K.A. Puj, JJ.) on 13.8.2002 reported in 2003 (160) ELT, 67 GUJ. Looking to the judgment delivered in the said case, we are of the view that this petition should also be allowed for the reason that, even by the impugned order passed by respondent no. 2, the principles of natural justice had been violated because the material on which he had relied upon was not supplied to the petitioners inspite of an order dated 04.11.1999 passed by the Commissioner of Customs (Appeals) directing him to supply copies of documents relied upon by him.

3. In view of the aforestated admitted facts, the impugned order dated 5.11.2003 passed by the Commissioner of Customs (Appeals), Ahmedabad, in Order-in-Appeal No. 398 to 401/2003 (151 to 154-JMN)/Cus/Commr(A)AHD as well as the Order-in-Original No. 61 to 64/SBY-DENOVO/2001-02 dt. 10.10.2001, are quashed and set aside.

4. In view of the above fact, without going into other questions, we remand the matter to the Dy. Commissioner of Customs, respondent No. 2, for considering the matter afresh. The said authority shall see that copies of documents to be relied upon by respondent no. 2 are given to the petitioners and only thereafter he shall decide the case after hearing the petitioners.

In view of the above order, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs.

Direct service is permitted.

(A.R. Dave, J.)

(K.A. Puj, J.)

(hn)